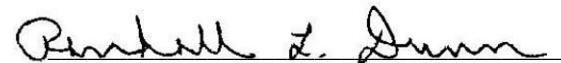


Below is an Opinion of the Court.



RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

11 In Re:) Bankruptcy Case
12 PAUL DOUGLAS KNIGHT,) No. 10-30580-rld7
13 Debtor.)
14)
15 ALLAN F. KNAPPENBERGER,) Adv. Proc. No. 10-03092-rld
16 Plaintiff,) MEMORANDUM OPINION
17 v.)
18 PAUL DOUGLAS KNIGHT,)
19 Defendant.)
20)

20 On August 31, 2010, I entered a Judgment of Dismissal
21 ("Judgment") in this adversary proceeding ("Adversary Proceeding"), based
22 upon the Adversary Proceeding pleadings, the evidence presented at the
23 August 2, 2010 trial ("Trial"), my taking judicial notice of docketed
24 documents in the debtor defendant's ("Mr. Knight") chapter 7 bankruptcy
25 main case, Case No. 10-30580-rld7 ("Main Case"), and plaintiff's ("Mr.
26 Knappenberger") arguments at the Trial. Mr. Knight did not appear and

1 did not present any evidence at the Trial.

2 On September 7, 2010, Mr. Knappenberger filed a timely Motion
3 Requesting an Amendment to Court's Ruling and Memorandum of Law ("Motion
4 to Amend Judgment"), effectively requesting that I reverse the Judgment
5 in favor of Mr. Knight and enter a judgment in favor of Mr. Knappenberger
6 on his claim that his state court judgments against Mr. Knight should be
7 excepted from Mr. Knight's bankruptcy discharge under 11 U.S.C.

8 § 523(a)(6).¹

9 Although Mr. Knappenberger cites Rule 8002(b) as authority for
10 the Motion to Amend Judgment, I interpret the Motion to Amend Judgment as
11 a motion pursuant to Civil Rule 59(e), applicable in bankruptcy cases
12 under Rule 9023. Rule 8002(b) is implicated to the extent that it
13 recognizes the filing of a motion of the type represented by the Motion
14 to Amend Judgment as tolling the time for filing a Notice of Appeal until
15 the entry of an order disposing of the Motion to Amend Judgment.

16 This Memorandum Opinion constitutes my findings of fact and
17 conclusions of law, which I make pursuant to Civil Rule 52(a), applicable
18 in this Adversary Proceeding pursuant to Rule 7052. I have jurisdiction
19 to decide the Motion to Amend Judgment and to enter a final judgment in
20 the Adversary Proceeding pursuant to 28 U.S.C. §§ 1334, 157(a),
21 157(b)(1), and 157(b)(2)(I).

22 Factual Background

23 The relevant facts in this Adversary Proceeding are not in

24
25 ¹ Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the
Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The Federal
Rules of Civil Procedure are referred to as Civil Rules.

1 dispute. At the Trial, I took judicial notice of the docket and
2 documents filed in Mr. Knight's Main Case for purposes of confirming and
3 ascertaining facts not reasonably in dispute. Federal Rule of Evidence
4 201; In re Butts, 350 B.R. 12, 14 n.1 (Bankr. E.D. Pa. 2006).

5 Mr. Knight filed his chapter 7 petition on January 27, 2010.
6 Main Case Docket No. 1. At the time of his bankruptcy filing, Mr. Knight
7 was unemployed and was receiving unemployment compensation benefits of
8 \$172.50 a month. Main Case Docket No. 2. Mr. Knight's schedules
9 reflected that he owned no real property, and his personal property
10 assets, with an aggregate value of \$2,480, consisted of household goods
11 and furnishings, books, clothing and a dog, all of which were claimed as
12 exempt. Main Case Docket No. 1. Mr. Knight's schedules further reflect
13 that he did not own a car. Id. The chapter 7 trustee filed a "No Asset"
14 report on April 30, 2010, and Mr. Knight's discharge was entered on
15 May 3, 2010. Main Case Docket Nos. 10 and 11. No adversary proceedings
16 were filed to deny Mr. Knight a discharge in bankruptcy, and the
17 Adversary Proceeding was the only adversary proceeding filed to except a
18 debt from Mr. Knight's discharge. See Main Case docket and particularly,
19 Docket No. 8.

20 In his Adversary Proceeding complaint, as amended
21 ("Complaint"), Mr. Knappenberger stated a single claim for relief,
22 asserting that a state court judgment that he obtained against Mr. Knight
23 for \$1,634.39 plus costs of \$471.20, plus interest at 9%, and a
24 supplemental judgment in the amount of \$20 per day, or \$600 a month, plus
25 costs of \$687.03, plus interest at 9%, should be excepted from Mr.
Knight's discharge under § 523(a)(6), as a debt for willful and malicious

1 injury to Mr. Knappenberger by Mr. Knight. See Adversary Proceeding
2 Docket Nos. 1 and 30. In his Answer to the Complaint, Mr. Knight denied
3 that his conduct that was the subject of the Complaint was willful and
4 malicious for purposes of an exception to his discharge. See Adversary
5 Proceeding Docket No. 9.

6 In his Trial Memorandum, Mr. Knappenberger states that he
7 obtained a money judgment against Mr. Knight in state court. See
8 Adversary Proceeding Docket No. 36, at p. 1. Mr. Knappenberger does not
9 state what the money judgment was for. See Adversary Docket No. 36. In
10 his schedules, Mr. Knight listed an undisputed debt to Mr. Knappenberger
11 in the amount of \$1,634.39 for "Unpaid Attorney Fees Case No. 0711-12788"
12 in Schedule F. See Main Case Docket No. 1. However, Mr. Knappenberger
13 argues that because Mr. Knight did not appear for two scheduled judgment
14 debtor examinations prepetition, the supplemental judgment that Mr.
15 Knappenberger obtained in state court, again prepetition, for sanctions
16 awarded against Mr. Knight as a result of his repeated failures to appear
17 evidences the willful and malicious injury visited upon him by Mr. Knight
18 and supports his claim for an exception to discharge under § 523(a)(6).
19 Id.

20 As previously noted, Mr. Knight did not appear at the Trial.
21 Mr. Knappenberger stated at the Trial that he had received a letter from
22 Mr. Knight's mother advising that Mr. Knight had been imprisoned for a
23 short term and would enter rehab upon his release.

24 Mr. Knappenberger submitted exhibit notebooks for the Trial
25 including Exhibits 1-8, all of which were admitted without objection. In
26 addition, I admitted Exhibits 9 and 10 at the Trial.

1 parties were anything but cordial as Mr. Knappenberger pursued his
2 collection efforts in state court, but the Exhibit 9 Letter is
3 essentially cumulative in characterizing the relationship between the
4 parties as a dogged debt collector pursuing a bitter and impecunious
5 debtor, feeling cornered. Exhibit 10 is a certified mail letter from Mr.
6 Knappenberger to Mr. Knight, dated April 23, 2009, advising Mr. Knight of
7 the second scheduled judgment debtor examination, noting that Mr. Knight
8 did not attend the first scheduled judgment debtor examination, and
9 further advising that if Mr. Knight did not attend the second scheduled
10 judgment debtor examination, Mr. Knappenberger would seek contempt
11 sanctions against him.

12 After admitting Mr. Knappenberger's exhibits and listening to
13 his arguments at the Trial, I made oral findings and conclusions on the
14 record and found ultimately that Mr. Knappenberger had not met his burden
15 of proof to prevail on his § 523(a)(6) claim against Mr. Knight.
16 Thereafter, the Judgment was entered, and Mr. Knappenberger filed his
17 Motion to Amend Judgment.

18 Discussion

19 In his Motion to Amend Judgment, Mr. Knappenberger does not
20 argue that any of my factual findings at the Trial were clearly
21 erroneous. Rather, Mr. Knappenberger argues that my legal conclusions
22 from the facts in the evidentiary record were wrong and accordingly
23 argues that I should reverse the Judgment. I disagree for the following
24 reasons.

25 A complete analysis of the legal issues presented in this case
26 requires a return to first principles. A primary objective of the

1 Bankruptcy Code is to provide a fresh start for debtors overburdened by
2 debts that they cannot pay. As stated by the Ninth Circuit in Toys "R"
3 Us, Inc. v. Esqro, Inc. (In re Esqro, Inc.), 645 F.2d 794, 798 (9th Cir.
4 1981), quoting from Williams v. U.S. Fidelity & Guar. Co., 236 U.S. 549,
5 554-55 (1915):

6 One of the primary goals of the Bankruptcy [Code] is
7 "to relieve the honest debtor from the weight of
8 oppressive indebtedness and permit him to start afresh
consequent upon business misfortunes."

9 See Devers v. Bank of Sheridan, Montana (In re Devers), 759 F.2d 751,
10 754-55 (9th Cir. 1985). No issues have been raised in this Adversary
11 Proceeding about Mr. Knight's veracity.

12 Accordingly, I start from the proposition that the exception
13 to discharge provisions of the Bankruptcy Code are to be interpreted
14 strictly in favor of debtors, such as Mr. Knight, and the plaintiff, such
15 as Mr. Knappenberger, in exception to discharge litigation bears the
16 burden of proof to establish each element of his claim by a preponderance
17 of the evidence. See Grogan v. Garner, 498 U.S. 279 (1991); First
18 Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1342 (9th Cir. 1986).

19 Section 523(a)(6) provides an exception to the debtor's
20 discharge "for willful and malicious injury by the debtor to another
21 entity or to the property of another entity." The Supreme Court analyzed
22 § 523(a)(6) in Kawaauhau v. Geiger, 523 U.S. 57 (1998).

23 The word "willful" in [523](a)(6) modifies the word
24 "injury," indicating that nondischargeability takes a
deliberate or intentional injury, not merely a
deliberate or intentional act that leads to injury....
25 Moreover, as the Eighth Circuit observed, the

26

1 [523](a)(6) formulation triggers in the lawyer's mind
2 the category "intentional torts," as distinguished
3 from negligent or reckless torts.

4 Id. at 61 (emphasis in original).

5 In Snoke v. Riso (In re Riso), 978 F.2d 1151, 1154 (9th Cir.

6 1992), the Ninth Circuit stated:

7 It is well settled that a simple breach of contract is
8 not the type of injury addressed by § 523(a)(6).
9 (citations omitted) An intentional breach of contract
10 is excepted from discharge under § 523(a)(6) only when
11 it is accompanied by malicious and willful tortious
12 conduct. (citations omitted)

13 These principles were forcefully restated by the Ninth Circuit in
14 Lockerby v. Sierra, 535 F.3d 1038, 1040-41 (9th Cir. 2008):

15 We begin from the proposition that tortious conduct is
16 a required element for a finding of
17 nondischargeability under § 523(a)(6).... [Petralia v.
18 Jercich (In re Jercich), 238 F.3d 1202 (9th Cir. 2001)]
19 holds that liability for a breach of contract need not
20 be wholly independent from liability for the tort in
21 order for the tortious conduct to give rise to
22 nondischargeability under § 523(a)(6).... Jercich
23 rejects a definition of tortious conduct that would
24 permit a finding of nondischargeability under
25 § 523(a)(6) only "if the conduct at issue would be
tortious even if a contract between the parties did
not exist."... But far from doing away with the
tortious conduct requirement, Jercich affirms it....
Contrary to Lockerby's argument, conduct is not
tortious under § 523(a)(6) simply because injury is
intended or "substantially likely to occur," but
rather is only tortious if it constitutes a tort under
state law.

26 The General Judgment is nothing more than a default money
judgment for unpaid attorney fees, awarding damages for a breach of a
contract obligation. See Exhibit 1. As such, as a matter of law, under
principles embraced by the Ninth Circuit in decisions from Riso and
Jercich through Lockerby, it does not support an exception to discharge

1 judgment against Mr. Knight under § 523(a)(6).

2 The Supplemental Judgment is different. It awards remedial
3 sanctions for Mr. Knight's "willful contempt of court" for failing to
4 appear at two scheduled judgment debtor examinations. However, it must
5 be examined in terms of the elements required to establish a claim for
6 relief under § 523(a)(6).

7 The standards for willfulness and maliciousness under
8 § 523(a)(6) are distinct. In order to find that an injury was "willful,"
9 I must find that the debtor acted either with a subjective intent to harm
10 or a subjective belief that harm was substantially certain to result from
11 his conduct. Carillo v. Su (In re Su), 290 F.3d 1140, 1144-46 (9th Cir.
12 2002); and In re Jercich, 238 F.3d 1202.

13 "Malice" concerns "(1) a wrongful act, (2) done intentionally,
14 (3) which necessarily causes injury, and (4) is done without just cause
15 or excuse." Murray v. Bammer (In re Bammer), 131 F.3d 788, 791 (9th Cir.
16 1997) (citing In re Cecchini, 780 F.2d 1440, 1443 (9th Cir. 1986)). Also
17 see In re Su, 790 F.3d at 1146-47.

18 Under the Supplemental Judgment, Mr. Knappenberger was awarded
19 costs of \$687.03 and "\$20.00 per day or \$600.00 per month" until Mr.
20 Knight appeared for a judgment debtor examination. See Exhibit 6, at p.
21 2. In his prayer for relief in the Complaint, Mr. Knappenberger requests
22 that those amounts, plus 9% interest (the Oregon state general judgment
23 rate under ORS § 82.010(2)), be excepted from Mr. Knight's discharge
24 "until paid." If I granted that prayer, the subject amounts plus simple
25 interest over one year would accumulate to a debt of \$8,796.86 in
26 relation to an uncontested unpaid debt for legal services of \$1,634.39,

1 that has been discharged.

2 Mr. Knappenberger primarily relies on the decision of the
3 Eighth Circuit in Siemer v. Nangle (In re Nangle), 274 F.3d 481 (8th Cir.
4 2001), as support for his arguments for reversal in the Motion to Amend
5 Judgment. The underlying causes of action in the Nangle case were
6 fundamentally tortious, alleging violations of federal debt collection
7 statutes and Illinois consumer fraud statutes. Id. at 483.³ The jury
8 found generally in favor of the plaintiff, Ms. Siemer, and awarded her
9 punitive damages. Id.

10 Ms. Siemer registered her judgment and filed a state court
11 motion to compel Mr. Nangle to produce documents disclosing his assets.
12 Id. at 484. An order was entered granting the motion. After Mr. Nangle
13 failed to comply with the order, the state court found him in contempt
14 and imposed what it characterized as a "compensatory fine" against him.
15 Id.

16 The Eighth Circuit concluded that the contempt order
17 established Mr. Nangle's "willful and malicious" conduct for purposes of
18 § 523(a)(6) in the circumstances of the case before it. The state court
19 specifically had found that Mr. Nangle's conduct was "willful" and that
20 his actions were "designed to interfere with [Ms. Siemer's] efforts to
21 collect the judgment against" Mr. Nangle. Id. However, the Eighth

22
23
24 ³ Ms. Siemer's state court judgment included the following: "(1)
25 Mental Distress, Embarrassment, Shame, & Humiliation: \$6,000.00; (2)
26 Deprivation of the Use of Property: \$1,000.00; (3) Exemplary Damages:
\$20,000.00; (4) Attorney's Fees: \$12,410.00; (5) Costs: \$1,313.32; and
(6) Attorney's Fees on Appeal: \$2,118.37." Siemer v. Nangle (In re
Nangle), 281 B.R. 654, 656 (BAP 8th Cir. 2002).

1 Circuit specifically declined to find that failure to comply with a court
2 order constituted willful and malicious conduct as a matter of law. Id.

3 In this case, the Supplemental Judgment includes a finding that
4 Mr. Knight's failures to appear for scheduled judgment debtor
5 examinations were willful. However, the state court made no findings as
6 to Mr. Knight's intent in failing to appear. See Exhibit 6.

7 There is ample evidence in the record before me to establish
8 that Mr. Knight was given notice of the scheduled judgment debtor
9 examinations and the Order to Show Cause hearing before the state court.
10 He did not appear at any of those proceedings-just as he failed to appear
11 at the Trial. As I stated orally at the Trial, Mr. Knight's continued
12 failures to appear at scheduled court proceedings apparently were
13 willful, at least in the commonly accepted sense of the term "willful,"
14 and have compounded the problems that Mr. Knight has faced in his
15 dealings with Mr. Knappenberger, the state court and this court. I do
16 not condone Mr. Knight's repeated failures to appear for scheduled
17 proceedings. However, based on the record in this Adversary Proceeding,
18 I cannot find that Mr. Knight's failures to appear for judgment debtor
19 examinations in Mr. Knappenberger's state court case establish Mr.
20 Knight's subjective intent to harm Mr. Knappenberger or Mr. Knight's
21 subjective belief that harm was substantially certain to result to Mr.
22 Knappenberger from his conduct.

23 The Exhibit 9 Letter indicates that Mr. Knight did not like Mr.
24 Knappenberger or his collection tactics, and Mr. Knight would not make it
25 easy for Mr. Knappenberger to collect his unpaid fees if he did not
26 accept Mr. Knight's settlement proposal included in the Exhibit 9 Letter.

1 However, the Exhibit 9 Letter does not indicate where Mr. Knight would
2 come up with the funds to pay a settlement, and all of the evidence I
3 have from Mr. Knight's chapter 7 schedules is that Mr. Knight had no
4 nonexempt assets available to pay either the General Judgment or the
5 Supplemental Judgment. As I stated at the Trial, you cannot collect a
6 judgment from an empty sack.

7 At all times relevant to Mr. Knappenberger's state court
8 lawsuit against Mr. Knight, Mr. Knappenberger was proceeding pro se and
9 was not authorized to practice law. Under the circumstances, Mr. Knight
10 had no reason to know that his failures to appear for judgment debtor
11 examinations would result in any financial injury to Mr. Knappenberger.
12 Accordingly, while I agree with, and am bound by, the state court's
13 conclusion that Mr. Knight's failures to appear for the two scheduled
14 judgment debtor examinations were "willful," I do not find that Mr.
15 Knappenberger has met his burden of proof to establish "willfulness"
16 under Ninth Circuit standards for purposes of obtaining an exception to
17 discharge judgment against Mr. Knight under § 523(a)(6).

18 With respect to "malice," while I am prepared to find, as I
19 stated at the Trial, that Mr. Knight's failures to appear for the
20 scheduled judgment debtor examinations in Mr. Knappenberger's state court
21 lawsuit against him were intentional, wrongful and without just cause or
22 excuse, I cannot find from the record before me that they necessarily
23 caused injury to Mr. Knappenberger. There is no evidence in the record
24 that in the absence of a settlement, as proposed in the Exhibit 9 Letter
25 in the early stages of Mr. Knappenberger's state court litigation against
26 Mr. Knight, Mr. Knappenberger ever could have collected any amount of the

1 General Judgment or the Supplemental Judgment from Mr. Knight. The
2 schedules filed by Mr. Knight under penalty of perjury with his
3 bankruptcy petition, and never challenged, reflect that he owned fully
4 exempt personal property valued at less than \$2,500 in the aggregate,
5 including his dog. Further, at the time of his bankruptcy filing, Mr.
6 Knight was unemployed, and there is no evidence in the record that he was
7 employed at the time that Mr. Knappenberger obtained the General Judgment
8 or at any time thereafter. As a result, I reiterate my finding at Trial
9 that Mr. Knappenberger did not meet his burden of proof to establish
10 malice to support an exception to discharge judgment against Mr. Knight
11 under § 523(a)(6).

12 In these circumstances, Mr. Knappenberger is seeking to obtain
13 an exception to discharge judgment against Mr. Knight that would make Mr.
14 Knight his economic slave in perpetuity for failure to pay a legal
15 services bill for \$1,634.39. Mr. Knappenberger has failed to establish
16 that § 523(a)(6) excepts Mr. Knight's debt to him from discharge. Mr.
17 Knappenberger failed to prove that Mr. Knight intended to injure him,
18 which is an element that must be proved to establish "willful" injury,
19 when Mr. Knight failed to appear at his scheduled judgment debtor
20 examinations. Mr. Knappenberger also failed to prove that the injury was
21 "malicious"--the evidence did not establish that Mr. Knight's conduct
22 necessarily caused injury. I will leave the Judgment in place. I will
23 enter a separate order denying the Motion to Amend Judgment.

###

25 cc: Allan F. Knappenberger
Paul Douglas Knight